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for ruling the freight in question irrecoverable. With a certain asperity, Buckley observes that “[t]he consequence of approaching the case through what might almost be described as a thicket of catchphrases, was that the central issues, which should have been addressed, were rendered obscure . . . the case demonstrates how maxims such as the supposed ‘no benefit’ principle can impede analysis” (85).

The first edition of Professor Buckley’s book was published in 2002. Developments in case law and fresh reform proposals (from the Law Commission for England and Wales) have justified a second edition, to which a new chapter has also been added, containing a valuable discussion of a series of hypothetical problems arising from the analysis presented in the book (see Part 6). In relation to the Law Commission, given the “very significant reversal of the approach provisionally favoured in its 1999 paper” (319), the new edition is timely. Inevitably, some of the developments considered have already been overtaken by more recent cases, such as the status of pre-nuptial agreements considered in *MacLeod v MacLeod* [2008] UKPC 64, now supplemented by *Granatino v Radmacher* (formerly *Granatino*) [2010] UKSC 42. The leading Scottish cases on illegality, such as they are – *Cuthbertson v Lowes* (1870) 8 M 1073 and *Jamieson v Watt’s Trustee* 1950 SC 265, for example – are not considered, though others feature, such as *Kemp v Glasgow Corporation* [1920] AC 836, though usually disguised as such by citation from English law reports (*Kemp*, for example, is also reported in 1920 SC (HL) 73). Perhaps Professor Buckley could be encouraged to include some treatment of Scots law in a third edition, at least in relation to the generic effects on a contract of illegality, if not in relation to the more distinctively Scots law of unjustified enrichment. Recent Scottish cases such as *Dowling & Rutter v Abacus Frozen Foods Ltd* 2002 SLT 491 demonstrate the regrettable degree of muddle and confusion which prevails in Scots law in this area. Closer acquaintance by Scots lawyers with Professor Buckley’s invaluable treatise would be of extraordinary benefit in this regard.

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Michael Furmston and G J Tolhurst, CONTRACT FORMATION: LAW AND PRACTICE

Oxford: Oxford University Press (www.oup.com), 2010. liii + 421 pp. ISBN 9780199284245. £175.

This book provides a detailed and constructive review of the specific issues arising from contract formation. While every contract textbook will unfailingly dedicate considerable space to this topic, it is of particular interest to have a text which concentrates solely on formation, and provides a focused review of the practical and theoretical issues which arise. Contract formation is capable of giving rise to contentious issues since, if there is an allegation of breach of contract, the most complete defence is often to point to the fact that there was no concluded contract – or, failing which, that the contract concluded was on different terms to those contended, and that these have not been breached. Thus, determining whether or not the parties were in a contractual relationship and, if so, the terms of that relationship, is often a matter of the first importance.

This book is a new contribution to the literature, but the authors acknowledge in their preface that it can trace its DNA to Michael Furmston, Takao Norisada and Jill Poole, *Contract Formation and Letters of Intent* (1998), curiously given a publication date of 1977

in the preface. The preface also highlights that this account will focus on Common Law systems, specifically England, Australia and the United States. While acknowledging that “the problems of contract formation have also been considered by the great Civil Law Systems” (v), the authors have not sought to give an account of these systems, albeit reference is made to formation in instruments such as the Vienna Convention, the Unidroit Principles for International Commercial Contracts, PECL and the DCFR. This is a useful early warning for the Scots reader, since the applicability of certain sections of the book is thus restricted: most notably where the authors deal with the role of consideration (albeit briefly) and the notion of promise underlying contract. The focus of the work is also highlighted in the introduction: it is “principally a work on English law for English practitioners” (para 1.05). With that caveat in place, this is a valuable account of contract formation.

Perhaps most usefully, this work sets out to review the principles underlying contract formation, rather than citing every single decided case in the area. While considerable extracts from cases are usefully provided, this is neither a textbook nor a cases and materials book. It is exhaustively referenced, allowing the reader to follow up specific points if so desired. The chapters cover some old favourites – the battle of the forms, the postal acceptance rule, and auctions, for example – as well as newer topics, such as online formation. Two chapters are dedicated to letters of intent, including a review of the practical aspects.

Interestingly, especially for those in a jurisdiction caught between the Common Law and civilian approaches to a difficult subject, the authors have also included a chapter on whether there is a duty to negotiate in good faith in English law. The authors acknowledge that there is a danger that contract formation can become rather formulaic, with the focus overly tied to concepts such as offer and acceptance: “is this an offer or an invitation to treat?” As they note, good judges treat these concepts “robustly” and instead use them as techniques to assess whether there is a contract (para 12.01). The present writer would certainly agree, and suggest that this is a trend which is also visible in Scots law, often tied to determining whether or not the parties intended to be contractually bound by their arrangement, rather than establishing whether every i was dotted and t crossed. Closely related to this, the authors recognise the problems caused by reliance on a theory based on “the unities of classical drama” (para 12.02), that is to say, where the parties go from no relationship to a concluded contract in one step. Lengthy negotiations and detailed revisions, often on minor points, are features which are ubiquitous in modern commercial negotiations – exacerbated in the 21st century by the ease of email negotiation and the ability to tweak electronic drafts of the written contract. Thus, a theory of contract formation which relies on a different understanding of commercial practice from a different era presents its own problems. Can these problems be resolved by importing a duty to negotiate in good faith?

While acknowledging the classic statement of Lord Ackner in *Walford v Miles* [1992] 2 AC 128 (which viewed a duty to negotiate in good faith as being “inherently repugnant” to the adversarial position of the parties), the authors assert that to dismiss too easily a duty to negotiate in good faith is facile (para 12.07). Instead, good faith is a flexible notion and arguably one which is less onerous than the English courts appear to believe (para 12.15). Despite this promising start, however, the authors do not go so far as to advocate the recognition of a prominent duty of good faith. Instead, they conclude that good faith is not in fact a strong or synthesised presence in English law. Rather, doctrinal principles in English law often serve to promote good faith (para 12.93) and consequently “good faith” can be detected in certain specific situations, without there being a general duty. The overall message of this chapter, however, is that good faith is not a doctrine which should cause alarm or panic to practitioners (as it has been known to do), but rather that its usefulness should be recognised and harnessed where appropriate. In conclusion, for providing a thorough and up-to-date review of the

problems and practicalities of contract formation, *Contract Formation: Law and Practice* is well worth reading.

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HANDBOOK OF RESEARCH ON INTERNATIONAL CONSUMER LAW. Ed by Geraint Howells, Iain Ramsay and Thomas Wilhelmsson with David Kraft

Cheltenham: Edward Elgar Publishing (www.e-elgar.co.uk), Research Handbooks in International Law, 2010. ix + 592 pp. ISBN 9781847201287. £175.

The *Handbook of Research on International Consumer Law* is one of an extensive series of "Handbooks of Research" published by Edward Elgar. This volume is a very welcome addition to the series, and offers consumer and commercial law scholars much useful material and comment. One of its many attractions is the wide range of topics covered in its eighteen chapters. These can be broadly divided into three categories: (i) chapters which examine substantive issues of consumer law, such as product safety or the regulation of consumer credit; (ii) those which focus on the interaction of consumer law with other areas of law, such as human rights, the internet, and competition law; and (iii) those which provide theoretical and over-arching analyses of consumer protection, such as the introductory chapter on consumer law in its international dimension (which includes a historical overview), and the chapter on information rights and rational choice.

It is a noticeable trend in European consumer protection law that consumer protection can be achieved through empowering and informing consumers themselves. Whereas consumers in the UK benefit from specific substantive protections, such as the Sale of Goods Act, consumer protection in the European Union tends to focus on the informed consumer. This is done through ensuring that consumers have access to the information they (are presumed to) need in order to enter into a transaction and, where the trader fails to provide that information, the consumer is typically given rights to help redress the imbalance, such as an extended right of withdrawal. Accordingly, European directives such as the Distance Selling Directive, the E-Commerce Directive, and the Unfair Commercial Practices Directive, all focus on the need to provide consumers with information, to help them identify the trader (in the case of online transactions, for example) and to identify accurately the goods or services. Providing such information addresses the "information asymmetry", whereby there is an imperfect distribution of information, and consumers are thought to be at a disadvantage because they lack the information about the goods and market conditions which is available to the supplier. Consumers are treated however, perhaps optimistically, as intelligent and autonomous individuals, capable of using this information appropriately where it is provided. This is expressed through the benchmark of the "average consumer" being someone who is "reasonably well informed, reasonably observant and circumspect" (Directive 2005/29/EC concerning unfair business-to-consumer commercial transactions, para 18).

The significance and impact of the European approach is brought to the fore in the chapter by Christian Twigg-Flesner and Reiner Schulze, "Protecting rational choice: information and the right of withdrawal". The authors introduce the information asymmetry, and consider ways to remedy it, before analysing the limitations of the "information-based" approach to consumer protection. In particular, the authors draw attention to the difficulties of treating consumers alike, since they will be influenced by various social and cultural factors, such that